

#11877

## VOLUNTARY AGREEMENT

THIS VOLUNTARY AGREEMENT (the "Agreement") is entered this \_\_\_ day February, 2000 by and between Café Japone Limited Partnership ("Licensee"), on the one hand, and Advisory Neighborhood Commission 2B (the "ANC"), Dupont Circle Citizens Association and all protestants of record (the ANC and protestants are hereinafter collectively referred to as "Protestants") in the Section 14B protests related to license number 10581.

### WITNESSETH

WHEREAS, Licensee has a Class "CR" License (ABC Retailer's License 10581) which entitles it to serve alcoholic beverages at the premises 2032 P Street, N.W. in conformance with ABC laws of the District of Columbia; and

WHEREAS, Licensee has applied for renewal of that license and has sought approval from the ABC Board for substantial changes to its operations to include an expansion of the establishment by 30 seats into the ground floor premises at 2032 P Street, N.W. (the "Expansion Area"); and

WHEREAS, Licensee has also sought approval for a substantial change in its license to expand its hours of operation; and

WHEREAS, the Licensee in the past obtained permission from the ABC Board to serve alcoholic beverages in its Aki annex space at 1429 21<sup>st</sup> Street (the "Aki Space"); and

WHEREAS, Licensee has made other requests to change the nature of its operations or the configuration of its restaurant space, including, without limitation, directly connecting the Expansion Area with the Aki Space through the party-wall between the buildings; and

WHEREAS, the Protestants have been recognized as parties in these proceedings in order to oppose Licensee's request for renewal of its license, its request for approval of substantial changes to its establishment and operations, and its other requested changes of its premises and operations; and

WHEREAS, the parties have settled their differences and resolved the protests upon terms and conditions which the parties intend to forever become a part of and bind the license (#10581) which is presently held, or which may in the future be transferred, by Licensee.

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NOW, THEREFORE, in consideration of the foregoing and the covenants and promises set forth below, the parties agree as follows:

1. The Expansion Area: Licensee will be permitted to operate within, and expand its seating capacity by 30 seats in, the Expansion Area subject to, contingent upon and provided, however, that:

A. All construction performed by Licensee to expand its operations into this area shall be subject to and in complete compliance with the zoning regulations for the District of Columbia, and that all such construction shall be performed under the authority of permits granted thereunder; and

B. Licensee shall not seek approval for, or otherwise under any circumstance construct or operate using, a connection through the party wall between the Aki Space (1429 21<sup>st</sup> Street) and the Expansion Area, and it shall promptly repair (brick-over) such areas altered by prior construction in accordance with rulings by the Zoning Commission for the District of Columbia (a copy of which is attached hereto as Exhibit \_\_); and

C. Licensee shall not seek approval for, or otherwise under any circumstance construct or operate using, an accessway for patrons from the Expansion Space to 21<sup>st</sup> Street; and

D. Licensee shall close the Expansion Space at 11:30 p.m., meaning, specifically, that all service in such space will cease at this time and all patrons will have been cleared from such space; and

E. Licensee shall not seek approval for, or otherwise under any circumstance operate, outdoor seating or restaurant facilities for the public space adjacent to the Expansion Area; and

F. Licensee shall submit a revised set of building construction plans to Protestants within thirty (30) days hereof which expressly indicate that Licensee shall not engage in any construction that involves removing or altering (other than fully restoring) the party wall between the Expansion Space and the Aki Space.

2. Licensee's Request for Increased Hours of Operation: Licensee's hours of operation shall be amended as follows:

A. As set forth above, Licensee shall close the Expansion Area at 11:30 p.m.;

B. Licensee shall close its 2032 P Street facility at 1:30 a.m. on weekdays (Sunday through Thursday), and on weekends at 2:30 a.m.

As to the hours of operation set forth herein, the parties agree that the term "close" means that all service will have ceased and all patrons will have been cleared from the restaurant.

3. Discontinuing Operations in the Aki Space: Licensee shall discontinue restaurant, food service, public seating (temporary or otherwise), alcoholic beverage service, and any operations involving public or private patronage or service of any kind in the Aki Space (1429 21<sup>st</sup> Street, N.W.). Licensee's authority to serve of alcoholic beverages for \_\_\_ persons in the Aki Space under its license (#10581) is terminated. Licensee further agrees to never seek issuance by the ABC Board of "one day" (Class F or G licenses) or temporary or private club (Class CX license) for the Aki Space. With respect to any use by Licensee of the Aki Space for any other purpose, Protestants expressly reserve all rights they may now or in the future have to, by way of example but not limitation, review, comment upon, challenge or protest such use, as the case may be, under all Codes, Rules and Regulations affecting the property.

4. Maintenance of Public Space and Alley: Licensee shall keep the sidewalk in front and the alley in the rear clean at all times, and the curbs free of trash. Licensee will install a new, larger trash dumpster [\_\_\_ ton] and increase its contract for trash removal to six (6) days per week, to include the following schedule: Monday morning through Saturday morning (after 10:00 a.m.), including holidays. Licensee shall also regularly treat its trash facilities and the alley for pest and rodent control. The contracts for such provision of trash collection and treatment are appended hereto and incorporated herein as Exhibit A. Licensee shall not discard trash into its dumpster between the hours of 12:00 a.m. and 8:00 a.m. No exterior public pay telephones shall be installed on the property.

5. Private Parking: Licensee shall provide, or otherwise enter into a valet parking contract for the provision of, twenty (20) private parking spaces for its customers on Wednesday through Saturday night. The contract for such provision of parking services is appended hereto and incorporated herein as Exhibit B.

6. Prohibition on Dancing: Licensee shall not offer, create facilities for, or otherwise encourage or permit dancing at its premises by any patrons, employees, independent contractors or any other persons.

7. Prohibition on Club Activities: Licensee shall not permit or foster activities which promote a "bar" or "club" atmosphere, including, without limitation, the existence of "d.j." equipment, imposition of cover or entry charges, or the use of mechanical or electronic devices, microphones or sound/electronic amplification equipment.

8. Security: Licensee shall control all excessive noise or unruly behavior by its patrons, whether on or in the area immediately adjacent to the premises. Licensee, upon advance written request by the ANC, shall hire a security guard or off-duty Metropolitan police officer (provided current police regulations continue to permit such employment) to patrol the Southeast corner of the intersection at 21<sup>st</sup> and P Streets, N.W. and other areas contiguous to the premises.

9. Participation in ANC Meetings: In order to address and control any problems associated with its operations, including problems which might impact upon the peace, order, quite and cleanliness of the neighborhood, Licensee, upon notice from the ANC, shall send a representative of the establishment to a meeting(s) of the ANC to discuss and find ways to reasonably resolve such problems.

10. Enforceability: It is the intention of the parties that this Voluntary Agreement be enforced by the Board, the parties hereto and residents of the Dupont Circle area to the fullest extent of the law, and that, accordingly, the parties hereto be required to strictly comply with the terms herein. To this end, it is understood and agreed that the rights herein conveyed and the obligations assumed are not absolute but, rather, contingent upon the parties' strict compliance with the terms and conditions of this Agreement, and that a material violation of this Agreement or its ABC license by Licensee which has not been corrected after thirty (30) days notice shall, standing alone, constitute cause for revocation by the ABC Board of the rights herein granted, including specifically, and without limitation, the right to continue service of alcoholic beverages to its patrons in the Expansion Area or operate the restaurant on any day past 12:00 a.m.

11. Withdrawal of Protest: The Protestants hereby withdraw their protests to the Applications for renewal and substantial change. It is expressly understood and agreed by the parties hereto that this withdrawal shall not be deemed a waiver or forfeiture of the rights of the protestants, or any other person, to seek, through the institution of a show cause proceeding or other applicable procedure, the revocation of Licensee's license (#10581) or other relief based on Licensee's

breach of this Agreement or the terms or conditions of its license.

12. Binding Effect: This Voluntary Agreement shall be binding upon and enforceable against the successors, agents and assigns of the parties. The rights and obligations set forth herein shall not be transferable, assignable or delegate unless such transferor, assignee or contractee expressly agrees to be bound by and comply with the terms herein. Licensee agrees to specifically notify any prospective transferee, assignee or contractee of the existence of this Agreement and to provide them with a copy.

13. Divisibility: Absolutely nothing set forth or agreed to herein shall give Licensee, its successors, transferees or assigns the right to later divide the Expansion Area from the original licensed area in order to create two separate establishments serving alcoholic beverages. If Licensee should terminate or transfer any of its business, stock, assets or subcontract any of its operations, this Agreement shall not be construed so as to convey any express or implied right to any person to redivide the commercial spaces now being consolidated so as to create multiple establishments selling alcoholic beverages. Should any such or like termination or redivision of space take place, the ABC license shall attach to and bind, if at all, the original second floor premises at 2032 P Street, N.W., and the Expansion Area shall have no right, title or interest in or to ABC license number 10581.

14. Further Rights: Licensee expressly agrees to abide by the terms and conditions of its ABC License. Nothing in this Agreement shall be construed to limit or prohibit protestants or any other person from exercising any rights or responsibilities under the District of Columbia Alcoholic Control Laws, D.C. Title 25 et seq., the ABC Municipal Regulations, 23 D.C.M.R., and other applicable zoning, historic district or public safety codes rules and regulations.

15. Incorporation: This Agreement is conditioned on its approval by the ABC Board and its incorporation by the Board into license 10581.

16. Notices: Any notices required to be made under this Agreement shall be in writing and mailed by Certified Mail, or return receipt requested, postage prepaid, to the other Parties to this Agreement. Notice is deemed to be received upon mailing. Notice is to be given as follows:

1. If to Licensee, to:  
Kenji Akiho  
2032 P Street, NW  
Washington, D.C. 20036

Copy to:  
Simon M. Osnos, Esq.  
7700 Leesburg Pike, Suite 408  
Tyson's Corner, VA 22043

2. If to the Protestants, one copy to each of the following:  
Dupont Circle Citizens Association  
P.O. Box 18162  
Washington, D.C. 20036
3. Advisory Neighborhood Commission 2B  
Vince Micone, Commissioner SMD 2B02  
P.O. Box 33224  
Washington, D.C. 20033
4. Jim Ostryniec  
1420 Hopkins Street, N.W.  
Washington, D.C. 20036
5. Don Baum, President  
Dupont Square Condo Association  
1415 21<sup>st</sup> N.W., Unit 1A  
Washington, D.C. 20036

IN WITNESS WHEREOF, the parties have executed this Voluntary Agreement as of the day and year first above written.

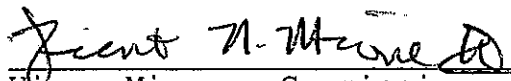
CAFE JAPONE LIMITED PARTNERSHIP

WITNESS:



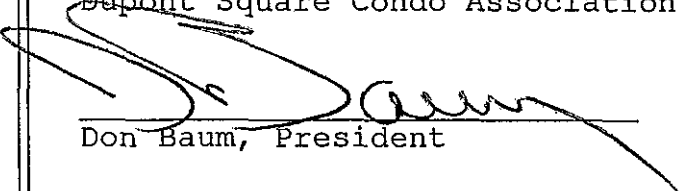
Kenji Akiho, Managing Partner  
Holder of ABC License 10581

ADVISORY NEIGHBORHOOD COMMISSION 2B

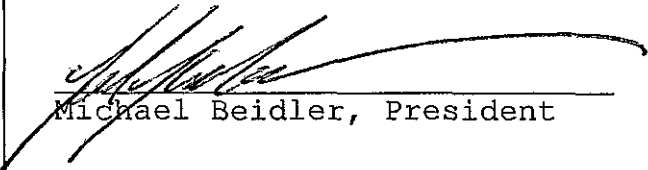


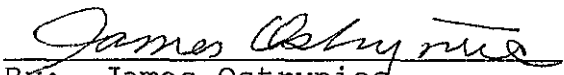
Vince Micone, Commissioner

Dupont Square Condo Association

  
Don Baum, President

Dupont Circle Citizens Association

  
Michael Beidler, President

  
By: James Ostryniec

REVIEWED AND APPROVED AS TO FORM AND ENFORCEABILITY:

Dated: \_\_\_\_\_

THE D.C. ALCOHOLIC BEVERAGE CONTROL BOARD

\_\_\_\_\_  
Roderick Woodson, Chairperson

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member



11977

MAIN OFFICE: (301) 853-7325

FINANCIAL OFFICE: (703) 820-4489

## AGREEMENT TO PROVIDE VALET PARKING SERVICES

THIS CONTRACT is made this 9th day of March 2000 between Midnight Valet Parking Services Inc., whom hereinafter is referred to as Midnight Valet, and CAFE JAPONE Restaurant, hereinafter referred to as The Customer, whose business which is referred to in the contract, resides at the location of 21 P St., NW Washington DC.

WHEREAS The Customer wishes to utilize the services of Midnight Valet to assist in the performance of various agreed upon duties assigned by The Customer, NOW THEREFORE IT IS MUTUALLY AGREED THAT:

### 1. SCOPE OF SERVICES AND AGREED UPON DUTIES

- \* Insure vehicular security for vehicles of patrons while utilizing Midnight Valet parking services at The Customers business location
- \* Provide valet parking services starting at an agreed upon time and ending at an agreed upon time. Any business falling before or after the agreed upon times will be handled by The Customer.
- \* To insure patron service and satisfaction
- \* To ensure the reputation of the Customers business establishment
- \* Midnight Valet assumes all liabilities that are covered by our insurance policies.
- \* Other:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### 2 EFFECTIVE DATE OF CONTRACT AND PERIOD OF PERFORMANCE

\* The effective date for this contract shall be \_\_\_\_\_. All work called for under this contract shall begin on \_\_\_\_\_ and shall end on \_\_\_\_\_.

- Valet service will be provided on at least one day per week.

\* In the case where Valet Service is not necessary for a given day, Midnight Valet requires that five days notice be given in order for the customer to not be billed for the minimum pre-scheduled hours. Five days notice is also required for special events requiring extra man-hours.

\* Other special directions:

15 parking spaces on Wednesday through Saturday  
night.

### 3. MANAGEMENT

\* The general manager for this contract is Brian Macklin (301) 853-7325. All correspondence and communication concerning this contract shall be addressed to:

MIDNIGHT VALET  
3513 Leesburg CT #201  
Alexandria, VA 22302

### 4. MEETINGS

\* When requested by The Customer, Midnight Valet shall participate at regular and special meetings with the client, and with staff throughout the duration of this contract, these meetings shall not exceed 2 per month.

### 5. CONSIDERATION AND PAYMENT

\_\_\_ Midnight Valet shall be compensated an hourly rate of \_\_\_\_\_ per valet and will require patrons to be charged \_\_\_\_\_ upon arrival for the parking of their vehicle.

-OR-

\_\_\_ Midnight Valet shall be compensated a sum of \_\_\_\_\_ per valet per night and will require patrons to be charged \_\_\_\_\_ upon arrival for the parking of their vehicle. In the situation where the total number of valets increases or decreases and the extra/less valet works less than a total of six hours. Midnight Valet will be compensated by The Customer an hourly rate of \_\_\_\_\_.

\_\_\_ Midnight Valet will be compensated a monthly rate of \_\_\_\_\_ for the purpose of garage rental.

\* The minimum number of hours paid per valet by The Customer for any given day is four hours.

\* The Customer will be charged a setup fee of \_\_\_\_\_ for the provision of necessary equipment and advertising.

\* It is expressly understood and agreed that The Customer will not be responsible for payment of any costs incurred by Midnight Valet excluding setup fees and other options that customer requests.

\* Each invoice submitted by Midnight Valet to The Customer shall be supported by a statement of time expended by Midnight Valet in the performance of its work under this agreement. Each invoice will be paid within 15 calendar days of The Customers receipt of that invoice. Delinquent payments will be charged a fee of 0.80% per calendar day.

## 6. PERSONAL COMMITMENTS

\* Midnight Valet agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken.

## 7. INDEPENDENT CONTRACTOR STATUS

\* No partnership, joint venture or other business relationship between the customer and Midnight Valet is created, inferred or implied other than that of independent contractors. No partner, principal or employee of either shall become or be deemed to be an agent or employee of the other or have the right to claim benefit or compensation as such by virtue of performing any act in furthermore of the project nor shall they have the ability to enter into any agreements binding upon each other.

## 8. CONTRACT ADMINISTRATION, OPERATION DIRECTION, AND AUTHORITY OF THE CUSTOMER

\* All contract activity will be under the overall operational and administrative direction of the Midnight Valet general manager or their designated representative and subject to his approval and acceptance.

\* Midnight Valet hereby agrees that The Customer or their designated representative shall have the authority TO:

- Review, comment upon, and approve or reject the work performance of Midnight Valet employees. They at no time have the authority to terminate or fire any employee of Midnight Valet but should report any instances of unsatisfactory performance to the General Manager;
- Ensure that Midnight Valet complies with the specific requirements of this contracts;
- Coordinate activities and areas of work responsibility of Midnight Valet within the framework of the overall engagement.

## 9. INDEPENDENCE

\* Midnight Valet throughout the period of this contract is and shall remain independent with regard to the client.

## 10. CONFLICT OF INTEREST

\* Midnight Valet hereby certifies that Midnight does not have any relationship which constitutes or creates a conflict of interest actual or potential which would be likely to have an effects on the results of the work to be performed under this engagement.

## 11. LIABILITY OF THE CUSTOMER AND MIDNIGHT VALET

\* The Customer shall in no way be held liable for any accident, personal injury, or property damage either caused by or incurred by Midnight Valet similarly, Midnight Valet shall in no way be held liable for any accident, personal injury or property damage either cause by or incurred by the staff, employees or representative of The Customer.

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\* Midnight Valet hereby indemnifies and holds harmless the customer from any claims and actions arising in any way from the negligent acts or omission of Midnight Valet. The Customer hereby indemnifies and holds harmless Midnight Valet from any claims or actions arising in any way from the actions or negligence of its staff, employees or representatives.

## 12. INSURANCE

\* Insurance will be provided by Midnight Valet in accordance with insurance policy.

## 13. SUCCESSORS AND ASSIGNEES

\* The customer and Midnight Valet each binds itself, its successors, assignees, and legal representatives to the other party to this contract and successors, assignees and legal representatives of such other party with respect to all covenants of this contract. Midnight Valet will not assign or transfer its interest in this contract without the written consent of The Customer.

## 14. TERMINATION OF CONTRACT

\* Work under this contract may be terminated, in whole or from time to time in part, by a mutual agreement between the customer and Midnight Valet, whenever for reason. Midnight Valet or the customer shall determine that such termination is in the best interest of Midnight Valet and or The Customer. Under such circumstances, the termination date of this contract shall be mutually determined between the customer and Midnight Valet. Determination of allowable fees (if any) and responsibility under any such termination shall be made in accordance with the conditions set forth in this contract.

\* Midnight Valet and The Customer shall have the right to terminate this contract should the other party violate any of the terms of this contract, upon presentation of 30 days written notice of its intent to the other party.

## 15. MODIFICATION TO CONTRACT

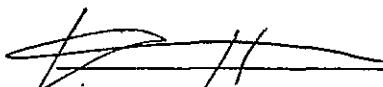
\* This contract may be modified only by a formal, written modification, signed by an authorized representative of both Midnight Valet and The Customer.

## 16. SOLE AGREEMENT

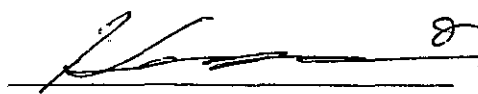
\* This contract is the only agreement between The Customer and Midnight Valet relating to the work covered by this contract and disputes arising under it shall be resolved under Washington District of Columbia law in a District of Columbia court of competent jurisdiction.

\* In witness where of the parties have executed this contract this 9th day of March.

Witness:

 BY: Michael Richard

Witness:

 BY: KENJI AKIHO

**BEFORE  
THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**In the Matter of :**

Café Japone Limited Partnership  
t/a Café Japone

Application for a Retailer's Class  
CR License (renewal) and  
Request for a Substantial Change

2032 P Street, N.W.  
Washington, D.C.

Case no. 11877-99074P

**Vince Micone, Single Member District Commissioner, Advisory Neighborhood Commission 2B; Don Baum, on behalf of the Dupont Square Condominium Association; Michael Biedler, President, on behalf of the Dupont Circle Citizens Association; and James Ostryniec, on behalf of the Protestants**

**Simon M. Osnos, Esquire, on behalf of the Applicant**

**Kenji Akiho, Managing Partner, on behalf of Applicant**

**BEFORE: Roderic L. Woodson, Esquire, Chair  
Vera Abbott, Member  
Ellen Oppenheimer, Esquire, Member  
Audrey E. Thompson, Member**

**ORDER ON WITHDRAWN PROTEST AND VOLUNTARY AGREEMENT**

The renewal application was protested and came before the Board for public hearing on November 25, 1998. The applicant also requested a substantial change to the nature of its operation on the licensed premises to include: (1) an expansion of the establishment by 30 seats into the ground floor premises at 2032 P Street, N.W., (2) an expansion of its current hours of operation, and (3) a reconfiguration of its restaurant space to include the connection of 1429 21<sup>st</sup> Street with 2032 P Street, N.W. The substantial change application came before the Board for public hearing on July 7, 1999. Both renewal application and the request to make substantial changes set out above resulted in numerous protests filed in a timely manner. Specifically, the ABC records show that Vince Micone, Single Member District Commissioner, Advisory Neighborhood Commission 2B; Don Baum, on behalf of the Dupont Square Condominium

**Café Japone Limited Partnership**  
**t/a Café Japone**  
**Page two**

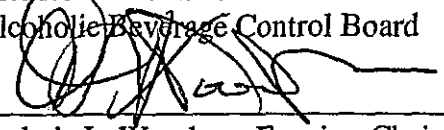
Association; Michael Biedler, President, on behalf of the Dupont Circle Citizens Association; and James Ostryniec, served as designated representatives in both the substantial change and renewal application. To adjudicate these matters in a prudent manner, the Board consolidated them.

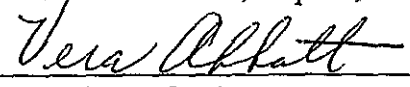
The official records of the Board reflect that the parties have now reached an agreement that has been reduced to writing, and has been properly executed and filed with the Board. Pursuant to the agreement received March 10, 2000, the protestants have agreed to withdraw their opposition, provided however, that the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the agreement.

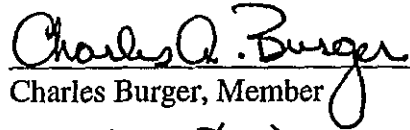
Accordingly, it is this 9<sup>th</sup> day of August 2000, **ORDERED** that:

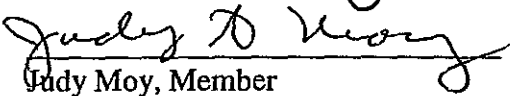
1. The opposition of Vince Micone, Single Member District Commissioner, Advisory Neighborhood Commission 2B; Don Baum, on behalf of the Dupont Square Condominium Association; Michael Biedler, President, on behalf of the Dupont Circle Citizens Association; and James Ostryniec, be, and the same hereby, is **WITHDRAWN**;
2. The renewal application of Café Japone Limited Partnership t/a Café Japone for a retailer's class CR license (renewal), located at 2032 P Street, N.W., Washington, D.C., be, and the same hereby, is **GRANTED**;
3. The request of Café Japone Limited Partnership t/a Café Japone for the substantial change in the nature of the operation of the premises to include: (1) an expansion of the establishment by 30 seats into the ground floor premises at 2032 P Street, N.W., (2) an expansion of hours of operation, and (3) a reconfiguration of its restaurant space to include a connection at 1429 21<sup>st</sup> Street with 2032 P Street, N.W., be, and the same hereby, is **GRANTED**;
4. The above-referenced agreement between the parties, be, and the same hereby, is **INCORPORATED** as part of this **ORDER**; and,
5. Copies of this Order shall be sent to the Protestants, the Attorney for the Applicant, and the Applicant.

District of Columbia  
Alcoholic Beverage Control Board

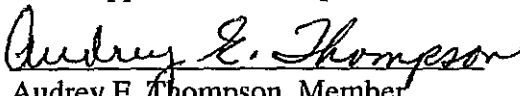
  
Roderic L. Woodson, Esquire, Chair

  
Vera Abbott, Member

  
Charles Burger, Member

  
Judy Moy, Member

Ellen Oppenheimer, Esquire, Member

  
Audrey E. Thompson, Member